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10/814,797

04/01/2004

Ji Sick Hwang

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06/02/2006

STAAS & HALSEY LLP

SUITE 700

1201 NEW YORK AVENUE, N.W.

WASHINGTON, DC 20005

EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/814,797 | <b>Applicant(s)</b><br>HWANG, JI SICK |  |
|                              | <b>Examiner</b><br>Timothy M. Ayres  | <b>Art Unit</b><br>3637               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04/01/04</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

### **DETAILED ACTION**

This is a first office action on the merits of application SN 10/814,797.

#### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the housing for the machine room and the machine room door vertically hingable (see 112.1 rejection below). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

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applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear as to where the housing (12) ends and the machine room begins. Figure 1 and 2 shows a different location than figures 3 and 4. For examination purposes it is assumed that none of the housings enclose the spacing member. It is unclear as to which housing, space, and door is referred to in claim 1.

5. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the machine room door is vertically hingable.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Regarding claim 1, it is unclear if it is meant to be a Jepson type claim with everything above "further comprising" to be known and the improvement being what follows "further comprising".
9. Regarding claim 2, it is unclear as to what metes and bounds are being claimed. It is also unclear as to what "an installation position of the structure" is.
10. Claim 2 recites the limitation "one end" in line 2. There is insufficient antecedent basis for this limitation in the claim.
11. Claim 2 recites the limitation "the other end" in line 3. There is insufficient antecedent basis for this limitation in the claim.
12. Regarding claim 2, it is unclear as to how the spacing member has "ends" if it is a 3 dimensional object with an interior and the reverse is true, if it is a 2 dimensional object with ends how does it have an interior.
13. Regarding claim 5, it is unclear as to what limitations are given by the word "hollow" in hollow chassis structure.

### ***Double Patenting***

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/739,296 in view of US Patent 4,932,224 to Katterhenery. The copending application teaches in the claims substantially the same as this patent application except a spacing member between the refrigerator housing and the adjacent structure (50). Katterhenery teaches a spacing member (12) between the housing (14) and an adjacent structure/floor (F). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of the copending application by adding the spacing member as taught by Katterhenery between its housing and adjacent structure to provide an adjustable cover there between that allows for ventilation.

This is a provisional obviousness-type double patenting rejection.

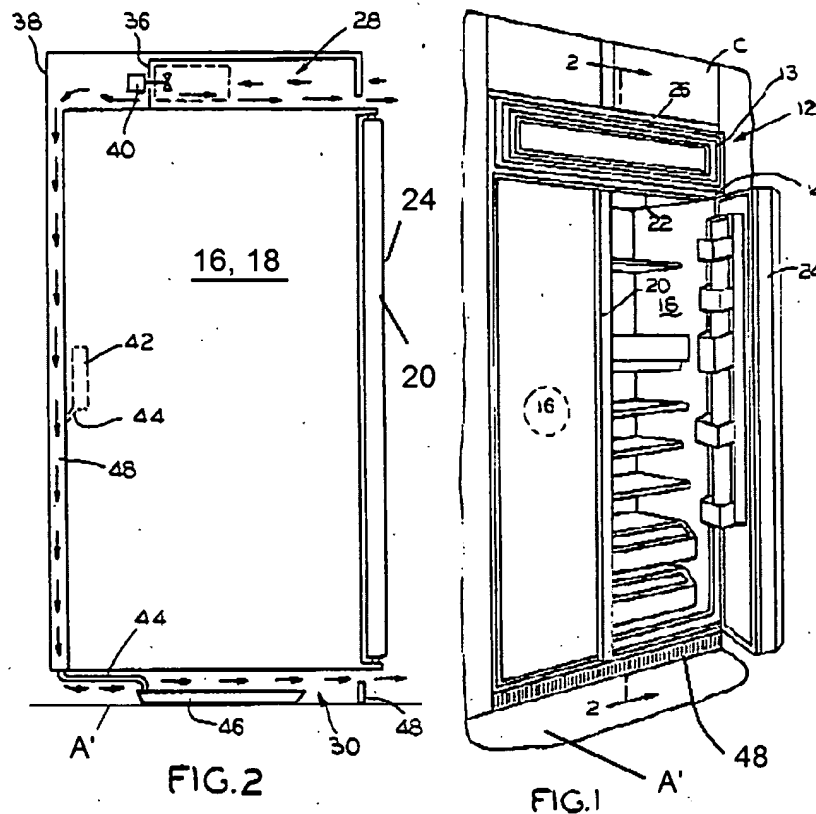
***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,970,874 to Solak. A built in refrigerator in parallel to an adjacent structure (A') comprises a housing (38) internally defining a space (16,18) and a door (20,24) hingebaly coupled to the housing to open and close the space. The center of hinging movement (axis of rotation) of the door is positioned outside of the housing as seen in figure 2. The refrigerator further comprises a spacing member (48), which defines a constant gap between the housing and the adjacent structure (A').



Solak '874 Figures 1 and 2

**Claim Rejections - 35 USC § 103**

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:



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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

20. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,735,976 to Lee in view of German Patent 296 11 645 to AEG Hausgerate. Lee teaches refrigerator with a machine room (48) on top of the housing (10) of the refrigerator. The machine room (48) has a housing (44) and a door (45). Lee does not expressly disclose a spacing member defining a constant gap between the housing and adjacent structure. Hasugerate teaches a flexible spacing member that is made to fill the gap between a refrigerator and an adjacent structure. At the time of the invention it would have been obvious for a person of ordinary skill in the art to use the flexible spacing member around the refrigerator of Lee to fill any gaps between it and its surrounding structure as taught by Hasugerate.

21. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,735,976 to Lee in view of German Patent 296 11 645 to AEG Hausgerate as applied to claim 4 above, and further in view of Japanese Patent 20011065232 to Sawano Mikio. Lee in view of Hausgerate discloses every element as claimed and as discussed above except the door comprising a pair of telescopic support units. Mikio teaches telescopic support units (8) to support the door (3) that has a hinge (7) outside of the housing (2). At the time of the invention it would have been obvious for a person

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of ordinary skill in the art to modify Lee in view of Hausgerate by adding telescopic support units to help support the door in the open position as taught by Mikio.

22. Claims 1-3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,735,976 to Lee in view of US Patent 4,932,224 to Katterhenery. Lee teaches refrigerator with a machine room (48) on top of the housing (10) of the refrigerator. The machine room (48) has a housing (44) and a door (45). Lee does not expressly disclose a spacing member defining a constant gap between the housing and adjacent structure. Katterhenery teaches a spacing member (12) between the housing (14) and the floor (F). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of Lee by adding the spacing member as taught by Katterhenery to have an adjustable cover that allows for ventilation.

23. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,735,976 to Lee in view of US Patent 4,932,224 to Katterhenery as applied to claim 4 above, and further in view of Japanese Patent 20011065232 to Sawano Mikio. Lee in view of Katterhenery discloses every element as claimed and as discussed above except the door comprising a pair of telescopic support units. Mikio teaches telescopic support units (8) to support the door (3) that has a hinge (7) outside of the housing (2). At the time of the invention it would have been obvious for a person of

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ordinary skill in the art to modify Lee in view of Katterhenery by adding telescopic support units to help support the door in the open position as taught by Mikio.

### ***Conclusion***

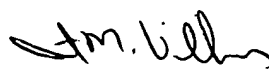
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA  
5/24/06



  
JANET M. WILKENS  
PRIMARY EXAMINER  
Art Unit 3637